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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS A. VELEZ,

Defendant and Appellant.

H033018

(Santa Clara County

Super. Ct. No. CC753079)

**I. STATEMENT OF THE CASE**

A jury convicted defendant Luis A. Velez of assault likely to produce great bodily injury, false imprisonment, and corporal injury on a former cohabitant after having suffered a similar conviction. (Pen. Code, §§ 245, subd. (a)(1), 236, 237, 273, subd. (e)(2).)<sup>1</sup> The jury further found that defendant personally inflicted great bodily injury in circumstances of domestic violence. (§§ 1203, subd. (e)(3), 12022.7, subd. (e).) The court imposed a three-year term for assault with a four-year enhancement for inflicting great bodily injury, a concurrent two-year term for false imprisonment, and a concurrent three-year term for corporal injury with a four-year enhancement for inflicting great bodily injury.

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<sup>1</sup> All further unspecified statutory references are to the Penal Code.

On appeal, defendant claims the court should have stayed the sentences for false imprisonment and corporal injury under section 654.

We agree, modify the judgment, and affirm the judgment as modified.

## **II. FACTS**

On December 29, 2006, defendant spent the night with David Harvey, who was HIV positive and with whom defendant had cohabitated and had an on-again/off-again sexual relationship. The next morning, they argued about defendant's drug use and his unnecessary use of the heater, and about whether to have unprotected sex. Defendant assaulted Harvey, beating him with his hands and fists, and physically restrained Harvey when he tried to leave. He threw Harvey around the kitchen, and Harvey struck his head on something and passed out. Harvey suffered a fractured eye socket that required surgery and a metal plate. In 2002, defendant was convicted of domestic violence against a different victim.

## **III. SENTENCING ERROR**

“Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct.” (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) The protection of the statute extends to cases in which a defendant engages in an indivisible course of conduct comprising different acts punishable under separate statutes. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) “ ‘[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once.’ ” (*People v. Palmore* (2000) 79 Cal.App.4th 1290, 1297.)

A defendant's criminal objective is “ ‘determined from all the circumstances and is primarily a question of fact for the trial court, whose findings will be upheld on appeal if there is any substantial evidence to support it.’ [Citation.]” (*People v. Braz* (1997) 57 Cal.App.4th 1, 10; see *People v. Hicks* (1993) 6 Cal.4th 784, 789.) We view the

evidence in a light most favorable to the court's factual determination and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. McGuire* (1993) 14 Cal.App.4th 687, 698.)

Defendant contends that there is no evidence to support a finding that he committed all three offenses for different purposes and with different objectives. He argues that the evidence shows that all offenses occurred during a single, indivisible violent incident with a single purpose and objective. Thus, defendant claims that the sentences for false imprisonment and corporal injury must be stayed.

The Attorney General agrees with defendant's analysis, and so do we.

Where the imposition of a particular term violates section 654, the appropriate remedy is to stay that term. (*People v. Dominguez* (1995) 38 Cal.App.4th 410, 420; e.g., *People v. Miller* (1977) 18 Cal.3d 873, 886, implicitly overruled on another point as recognized in *People v. Oates* (2004) 32 Cal.4th 1048, 1068, fn. 8; *People v. Deloza*, *supra*, 18 Cal.4th 585, 591-592.)

#### **IV. DISPOSITION**

The judgment is modified to stay the terms and enhancements imposed for false imprisonment and corporal injury (counts 2 & 3). As modified the judgment is affirmed. The Clerk of the Santa Clara County Superior Court is directed to prepare a new abstract of judgment that reflects the stays.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.